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CURRENT TOPICS

The Queen's Speech: Law Reforms

THE legal profession will echo Mr. J. E. S. SIMON'S welcome, in moving the humble Address of Thanks to Her Majesty for Her gracious Speech, to the announcement that an inquiry will be held to consider practice and procedure in relation to administrative tribunals and quasi-judicial inquiries, including those concerning land. Another subject which has long been urgent, the reform of local government in England and Wales, is being examined, according to the Speech. Measures to amend the law relating to valuation and rating in England and Wales and in Scotland are to be passed. Legislation is to be proposed to reform the law of copyright on the basis of recommendations in the report of the Copyright Committee. In addition, three measures which had not completed their Parliamentary passage before the Dissolution have been re-introduced with slight amendments, namely, the County Courts Bill, the Criminal Justice Administration Bill, and the Road Traffic Bill.

Lord Birnam

LORD BIRNAM, judge of the Court of Session in Scotland since 1945, died on 5th June at the age of 71 after a career of the highest legal distinction. He had the unusual experience of assuming three separate titles during his lifetime, having been previously allowed to assume the judicial title of Lord Murray when in 1938 he was made a judge of the Scottish Land Court after being Senior Advocate-Depute. In 1941 he was appointed Solicitor-General under the name of Thomas David King Murray, which he had been allowed by His Majesty to resume, and was knighted. From 1941 to 1944 he had been chairman of the Scottish Coalfields Committee.

Counsel's Fees

A FURTHER note by the Council of The Law Society to that appearing in the January issue of the *Law Society's Gazette*, on the subject of counsel's fees, now appears in the June issue. Where under the modern practice, it was said in the January issue, counsel's fee lists are delivered periodically, the fees should in the Council's view be paid within three months from the date of delivery of the list, whether or not the solicitor has been put in funds by his client, or has taxed his costs. The Council now add that, where litigation is proceeding, it is not the general practice of counsel's clerks to deliver a fee list until they know or have reason to think that the litigation has been concluded, unless the fees have become substantial. The Council consider that it would not be contrary to the etiquette of the profession to delay payment of counsel's fees until the conclusion of the litigation, even though a fee list might have been delivered. In such case, the fee list should be returned with the specific fees marked as "case not yet concluded." If, during the course of litigation, the amount of counsel's fees becomes substantial, the Council consider that the solicitor should bring that fact to the notice of the client and request to be put in funds to enable him to discharge the outstanding fees.

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Legal Aid: Increase of Contribution

SOLICITORS in legally aided matrimonial causes, and in other legal-aid cases where it appears that more would have to be spent on costs than at first estimated, are requested by the Council of The Law Society to inform the appropriate Area Committee immediately it becomes apparent that the petition is to be defended or that the amount of costs to be incurred will exceed the actual contribution. In the *Law Society's Gazette* for June they state that a common type of case in which an actual contribution is likely to be assessed at less than the maximum is a matrimonial cause where the local committee have no reason to suppose that the proceedings will be defended. The Area Committee are obliged, on receiving information that the proceedings are likely to cost more, to increase the contribution up to the amount which the proceedings are likely to cost or the maximum contribution, whichever is the less (General Regulation 5 (5) as amended by the Legal Aid (General) (Amendment No. 1) Regulations, 1954).

Local Authorities' Land Transactions and the Town and Country Planning Act, 1954

A LONG and informative circular (No. 34/55) has been addressed by the Ministry of Housing and Local Government to local authorities, explaining the effect of the Town and Country Planning Act, 1954, on their transactions in land and in particular on compulsory purchases. The circular sets out the circumstances in which local authorities may have claims to compensation under the 1954 Act, or may be liable to make payments to the Central Land Board, and describes the basis of compensation payable on future compulsory acquisitions, both in normal and special cases. In dealing with future acquisitions by agreement, the circular points out that there may be cases where compensation on the basis of compulsory acquisition would exceed open market value and authorities might therefore find that they could negotiate a purchase for less than the compulsory purchase price. They are, however, adjured to bear in mind that the market value of the land might have been seriously depreciated by its being reserved in a development plan for public purposes, and might thus provide no fair basis for compensation: acquiring authorities might therefore expose themselves to criticism in such cases unless they could show that the vendor had not agreed a price in ignorance of his position if compulsory powers had been used.

"Protection Notices" under Section 33

THE circular throws some interesting light on the practice to be adopted by local authorities in issuing "protection notices" to purchasers under s. 33 of the 1954 Act and the meaning which may be attached to a notification under the section that there is no proposal to acquire. It will be remembered (see 98 SOL. J. 830–831 and p. 211, *ante*) that a prospective purchaser of land may, under the section, inquire of the borough or district council whether the council propose to acquire the land themselves within the next five years, or have been informed by any other authority with compulsory purchase powers that they propose to do so. In the event of a negative reply by the council (or no reply within twenty-eight days), the purchaser, provided he completes the purchase or enters into a *bona fide* contract to purchase, and notifies the council of that fact within three months of the "protection notice," will be entitled on compulsory acquisition during the five-year period to an addition to the compensation payable equal to the value of any planning permission attaching to the land when the "protection notice" was issued. Circular 34/55, in an attempt to secure uniformity in the administration of s. 33, points out that in replying to an application under the section the district council are under no duty to consult potential acquiring authorities, who should therefore notify the council promptly when they form a definite intention to acquire a particular piece of land within five years. "Intention" in this context, the circular states, clearly means much more than that the council are considering the possibility of acquiring the land, and it suggests that a notification should not be given unless the proposed acquisition has the approval, at least in principle, of the appropriate committee of the council. There should, it adds, be no question of applying the procedure to alternative sites only one of which will in fact be needed. This advice, if heeded, will enable a purchaser's advisers to assess realistically the informative value, as opposed to the financial safeguard, afforded by a "protection notice."

Respect for the Law

IN his presidential address to the Holdsworth Club of the Faculty of Law, Birmingham University, on 10th June, LORD RADCLIFFE said: "I do not think that contemporary society is sufficiently alive to the danger of putting law upon the assembly line. The vice of our modern democratic societies is that they trade upon the long established reputation of law while they often market what are but shoddy goods." There was a feeling that the currency had somehow been depreciated. He added that he was deliberately exaggerating and asked if another name could be found for statute law—para-law or sub-law for example. He also asked whether law is to be thought of as an expression of the general will of society—the better the law the more flexibly it changes in response to that changing will—or whether we, however imperfectly, may try to relate it to some other more constant, less mundane authority? "It is the nature of things," he concluded, "that law can only bind those who will allow it an origin that shares something of the divine."

Criminal Responsibility and Psychiatry

IN a world where increasing reliance seems to be placed upon psychiatrists to determine questions of criminal responsibility, a breath of fresh air came on 7th June from Professor BARBARA WOOTTON, Nuffield Research Fellow at Bedford College, London University, who was addressing the Howard League for Penal Reform. Of her experience as chairman of a London juvenile court, she said: "Something inside me says very firmly that by no standard I can recognise do these children appear to me to be 'ill.' More often than not, I send them (to psychiatrists) not because of any belief that there is a medical problem but because I think the doctors are sensitive and humane men and women who will reach humane and intelligent decisions. If I am going to move from the rigid conservatism of the M'Naghten rules, I should therefore be inclined to jump the whole way and end up by thinking . . . that we should do better not to raise the question of moral and criminal responsibility at all." Unless and until we got as far as that there would remain a certain fundamental uneasiness. "If there are really concealed moral judgments in our definitions of mental health and mental illness," Professor Wootton concluded, "it is not right that we should rely wholly on the psychiatrist or the medical profession to make these judgments. Moral judgments of what is the good life should be arrived at by whatever means, religious and so on, we reach our own particular moral codes."

THE ROYAL COMMISSION ON THE TAXATION OF PROFITS AND INCOME

THE Royal Commission which has just published its final report was appointed in January, 1951, and this, the final result of its four years' work, runs to some 487 pages, so that it is hardly possible to summarise it in a page and a half nor yet to discuss its implications at all deeply without a considerable amount of study. Moreover the Commission was not unanimous in all matters and three members presented a minority report which, whilst in agreement with the majority in many things, disclosed fundamental differences on others. Accordingly all that is proposed in the present article is to indicate briefly some of the outstanding features, particularly those which are of the most direct interest to the profession, in the hope that it may be possible in the future to embark upon more detailed consideration of some parts of the report.

Before passing to those matters of direct interest to practitioners other than Revenue specialists one might, however, observe upon some of the broader aspects of the Commission's task.

THE TAXATION OF COMPANIES

One aspect was the relationship of the taxation of companies to that of the taxation of individuals. Time was in Revenue law when it was supposed that a company paid income tax on behalf of, and as agent for, its shareholders. This view has long been discredited but, by what is in theory at least something of an anomaly, tax which the company pays on its own behalf on its own profits is in fact allowed to "frank" the dividends declared and passed to the shareholders. Difficulties arise in that a company does not always distribute the whole of its profits (and indeed seldom does) and in that a company is not, like an individual, liable to sur-tax. To some extent this non-liability to sur-tax is counteracted by a liability to profits tax which at the moment is imposed in effect at 22½ per cent. on distributed and 2½ per cent. on retained profits. The majority report of the Commission recommends that the system remains broadly as it is to-day, but that the differential rates of profits tax be replaced by a tax upon company earnings as such at a rate considerably nearer 2½ per cent. than 22½ per cent.

DEPRECIATION ALLOWANCES AND STOCK VALUATIONS

These two may not seem to have very much in common but in fact there is, and has been for some time, a divergence of views amongst both economists and accountants as to the proper way of computing profits when the value of money is declining, and this divergence of views is to be felt in both instances. Suppose a trader to purchase a machine at a cost of £100 and to run it for ten years at the end of which time he replaces it with an identical machine which costs £300. In real terms he is no better off than when he bought the first machine, and the question is whether the depreciation of his assets over the period should have been allowed on the basis of £100 or £300. In the case of stock valuation the dispute usually centres upon the question whether a trader must be assumed to use his stock in the order in which it was purchased (First in—First out) or whether he may be assumed to use it in the reverse order (Last in—First out). Those interested in these problems must read the report for themselves but, briefly, the majority report recommends that depreciation allowances should be calculated by reference to the original cost of the asset and not to the replacement cost, but that in the case of stock valuations the Last in—First out basis may, in proper cases, be allowed. It is fair to say that both these recommendations are made upon a premise that stability in purchasing power is the normal thing to be expected and that the Commission did not consider itself obliged to assume a persistent decline in the purchasing power of money. In view of the fact that there has been such a persistent decline over the last sixty-odd years and that it shows no sign of being arrested, it may well be that the usefulness of the Commission's finding on these points is somewhat vitiated.

CAPITAL GAINS

The majority report, after considering the possibility of imposing an income tax upon gains which are at present regarded as being outside the sphere of income tax, reported strongly against any such proposal. The minority report appears to be equally strongly in favour of such an extension of the ambit of income tax.

After that necessarily cursory account of the larger matters with which the Commission was concerned we may turn to some less far-reaching matters which are perhaps of more day-to-day interest to practitioners.

EXPENSES

The deduction of expenses in computing profits for the purposes of Cases I and II of Sched. D has for many years now been affected, if not bedevilled, by the *dictum* of Lord Davey in *Strong & Company of Romsey, Ltd.* v. *Woodfield* (1906), 5 Tax Cas. 215, at p. 220, where he said that expenditure must be made "for the purposes of earning the profits." Since then those words have been treated as though they were written into the statute. The majority, although not the minority, recommend that they be, as it were, written out again.

The allowance of expenses against Sched. E income is governed by the words "wholly, exclusively and necessarily" and, as has often been shown to be the case, those words have been given a very restricted meaning. The majority recommend that the rule be amended so as to permit the allowance of expenditure "reasonably incurred for the appropriate performance" of the duties of the office or employment, a suggestion which, if adopted, will introduce considerably more flexibility and reality into the matter.

DEEDS OF COVENANT

The majority see no reason why income should not be in effect freely transferred from one taxpayer to another by deeds of covenant providing that it can be said that the income is truly the income of an ascertainable "other." The minority on the other hand suggest that no more than £500 of income should be effectively transferable to any one beneficiary. Apart from this suggested limit, both majority and minority consider that a deed of covenant whereby the income is transferred to trustees to hold upon discretionary trusts for a specified class should be made ineffective for tax purposes because such income does not become the income of any one ascertainable person, and further recommend that the maker of a covenant in favour of a child, grandchild or other member of the family should be required to produce each year formal declarations as to the absence of any agreement or understanding for the return of any

part of the benefit: it appears that by the return of any part of the benefit the Commissioners include payment by the beneficiary to or on behalf of any third party nominated by the covenantor.

Fluctuating Incomes

The Commission considered the difficulties which arise where incomes are subject to wide fluctuations. Frequently this is thought to affect sur-tax payers only, but, as pointed out in the report, it applies equally at the other end of the taxable scale where reduced rates of income tax are to be had. The Commission consider that any form of averaging over a number of years, even if theoretically desirable, is administratively impossible, but recommend that in cases where income falls by 50 per cent. from one year to the next an average should be allowed between the two years concerned, and if a further fall of 50 per cent. is suffered in a third year then an average should be allowed between the three years concerned.

Benefits in Kind and Personal Expenses

The Commission had some criticism to offer of the legislation of 1948 whereby benefits in kind and personal expenses may or may not be taxable according to whether the recipient is or is not a director of a company or does or does not receive £2,000 per annum or more in remuneration. The majority recommend firstly, that the test should be £2,000 per annum or more as distinct from the holding of a directorship, that is to say, that a director with less than £2,000 per annum should not come into the scheme of what is now the Income Tax Act, 1952, s. 160 *et seq.*, and secondly, that where the employee does receive £2,000 per annum or more the provisions should apply equally to the employees of charitable bodies, non-trading concerns, educational establishments or local authorities as it now applies to the employees of commercial institutions.

Other recommendations of the majority in this sphere are that the Inland Revenue should abandon its attempt to take so-called "home savings" into account in allowing expenditure properly incurred in the course of employment, that the special relief for additional travelling costs occasioned by war circumstances should be terminated, and that where a taxpayer follows two or more separate callings, relief should be given for the cost of travelling between a principal place of work and any place where a subsidiary calling is exercised.

Compensation for Loss of Office

Of late, it has been very fashionable indeed for comparatively large sums to be paid to employees by way of cancellation of their service contracts. Frequently, as pointed out by the Commission, the service contracts were entered into with a view to such a sum being in due course paid on cancellation. It is recommended that payments for compensation for loss of office should in general be taxable, but that such emoluments should be subject to a form of "top slicing" to prevent their falling into charge all in one year.

Post-cessation Receipts

It is well known that where the profits of a professional man are computed for the purposes of Case II of Schedule D upon a cash, rather than upon an earnings, basis, any receipts which come in after he has ceased to practise, that is to say, when there is no longer a source, are not subject to tax at all. It is recommended that eventually such sums should be subject to tax under case VI of Schedule D, but it is further recommended that this should occur only when the recommendations of the Tucker Committee on Pensions, etc., have been implemented; that is to say, not until provision has been made whereby the self-employed man can secure some retirement benefit to himself. It is to be noticed that even if the suggestion is implemented there will still be some benefit to be had from having some fees outstanding on cessation since the top rate of tax after cessation may be taken to be lower than that applicable whilst the profession continues.

Capitalisation and Capital Profits

It will be recalled that it was decided by the House of Lords in *C.I.R.* v. *Blott* [1921] 2 A.C. 171; 8 T.C. 101, that where a company applies part of the balance on its reserve accounts or profit and loss account to paying up bonus shares issued fully paid to existing shareholders, such an issue is not a taxable receipt in the hands of those shareholders, and it may be further recalled that in *C.I.R.* v. *Fisher's Executors* [1926] A.C. 395; 10 T.C. 302, it was held that the position was the same where the balances were applied in paying up debentures to be distributed fully paid to existing shareholders. It is recommended that there should be no change in the law in the case of a bonus issue of shares, but that where there is such a bonus issue of debentures the value of those debentures should be included in the recipient's income for sur-tax purposes, unless they are received by trustees as part of the capital of settled property.

It may also be recalled that when a company has made a profit on the realisation of assets so that that profit is not taxable as part of the profits of the company's trade, and where the amount of such profit is distributed to shareholders as a special "capital profits" dividend, it has been the practice to pay such dividend without deduction of income tax, and such dividends have not been regarded as taxable income in the hands of the shareholders. This practice may well be a survival from the days mentioned above, when a company was regarded as paying tax on behalf of its shareholders. As is stated in the report, it has little foundation in the modern view of the law, and accordingly it is recommended that such dividends should be regarded as taxable income in the hands of the shareholders. It appears from the report that the Commission considers that this is the correct treatment within the provisions of the law as it stands, and it is uncertain whether the Board of Inland Revenue will accept this implied invitation to change its practice without the need for legislation or whether in fact the present position will be allowed to continue until such time as there may be legislation.

Schedule A Assessments

There are a number of detailed recommendations for the amendment of the provisions relating to Schedule A assessments and to maintenance claims. Those of most general interest are: firstly, that Schedule A assessments should be capable of annual revision, thus obviating the need for a great number of separate assessments under Case VI of Schedule D for "excess rents," and secondly, that the scale of statutory deductions for repairs should be reviewed after the next revaluation.

Other Recommendations

As stated at the beginning of this article, the matters mentioned above are only a selection of those which it is thought might be of greatest interest to the general practitioner. They by no means exhaust the recommendations of the majority report, and in order that readers who

have particular interests may not be misled by thinking that no change is recommended because none has been mentioned herein the following is a bare list of matters which are touched upon in the recommendations of the majority report: overseas income of individuals, the taxation of mining concerns, reliefs for losses, some technicalities of profit tax, mutual trading by corporations, overseas profits and double taxation relief, basis of assessments under Schedule D, various detailed matters of administration of the tax system, some simplification and overhaul of provisions against tax avoidance and some variations in the provisions relating to tax evasion, notably that a wife should sign her husband's tax return to verify the amount of her income included therein. Finally, there is a recommendation that, whilst complete codification of the tax law is impracticable, yet when any substantial change in a particular branch thereof is projected the opportunity should, if possible, be taken to codify the surviving parts of the old law, and further, that there should be a regular consolidation every ten years beginning with the year 1962.

Even if one were to consider all the recommendations of the Commission one would still not have exhausted all the matters which are examined in the report. It is an invaluable document for anyone who is interested not only in what the tax law is but also in the question why it should be so. The theoretical and practical bases of the present tax system are subjected to a thorough and searching examination, and the Commission is to be especially congratulated not only upon the substance of its report but also upon the language in which it is expressed. No document dealing with Revenue law can ever be light reading, but the findings of the Commission and the arguments presented before it are, particularly in the majority report, presented in a manner fully as attractive as the subject matter will ever allow.

G. B. G.

THE WELFARE OF THE INFANT

A STATUTORY phrase which from time to time contrives to escape from its context with misleading results is the exhortation to the court, in s. 1 of the Guardianship of Infants Act, 1925, that it is to regard the welfare of the infant as the first and paramount consideration. The words are so striking in a statute, and in themselves so sentimentally humanitarian, that it seems hard to have to admit that their operation is limited in any way. But limitations there are. For one thing, Parliament had not finished its sentence, so to speak. The section goes on: "and [the court] shall not take into consideration whether from any other point of view the claim of the father, or any right at common law possessed by the father, . . . is superior to that of the mother," or vice versa. In *Re Carroll* [1931] 1 K.B. 317, Slesser, L.J., insisted on the materiality of this context. There is no scope for the operation of s. 1 except in a contest between the claims of the parents (or between their respective sides of the family if they be dead—*Re Collins* [1950] Ch. 498). In disputes between a parent, innocent of misconduct towards the child, and a stranger, the parental rights have fuller play.

Moreover the section begins by defining the proceedings to which alone it is intended to relate. These are proceedings where there is in question the custody or upbringing of an infant or the administration of his property. In the year after the Act was passed, it became possible to obtain an order of the court for the adoption of an infant. Many times have the solemnity and important effects of such an order been stressed in the courts, and at least three times in the last three years has it been made clear, in cases we shall presently mention, that adoption proceedings touch more than just the custody and upbringing of the child and the administration of his property, and that Parliament has never said with regard to them that the child's welfare is to be the paramount consideration.

Section 1 of the Guardianship of Infants Act, 1925, probably finds to-day its most frequent application in matrimonial proceedings. Lord Merivale, P., recognised its authority in that sphere as early as *W. v. W.* [1926] P. 111. Its underlying spirit seems to have been claimed by Lord Hanworth, M.R., in *Re Thain* [1926] Ch. 676 to be an emanation of the Chancery Court, but on this point we may perhaps regard Scrutton, L.J., as the better historian. In his judgment in *Re Carroll, supra*, he traces the idea back to the Act of 1886 by which, in less emphatic terms, the parents' wishes (and especially the father's) became of reduced importance on matters of custody and access, as compared with the deference paid to them in *Re Agar-Ellis*, for instance. That case ((1883), 24 Ch. D. 317) shows to what extent the common-law rights of the father had formerly precluded the court from a dispassionate consideration of the well-being of the infant.

It is time we considered what is meant by "welfare." Lindley, L.J., enumerated some of the vital elements when he said (*Re McGrath* [1893] 1 Ch. 143, at p. 148): "The welfare of the child is not to be measured by money only, nor by physical comfort only. The word 'welfare' must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded." These are the sort of matters which the Court of Chancery considered, for instance, when controlling the affairs and assigning the custody of one of its wards, though the wardship might have arisen by one of the indirect modes formerly possible such as the commencement of proceedings for administration of a trust in which the infant was interested (see *Re Liddell's Settlement Trusts* [1936] Ch. 365, *per* Romer, L.J., at p. 374). And now that, under s. 9 of the Law Reform (Miscellaneous Provisions) Act, 1949, the court has to consider whether or not to continue the child as its ward after the expiration of an automatic period, there is no reason to think that it adopts any other criterion than a dominant regard for the infant's true interests.

We see similarly enlightened principles at work in other parts of the law. By the Children and Young Persons Act, 1933, s. 44 (1), every court in dealing with a child or young person brought before it either as being in need of care and protection or as an offender or otherwise is bound to have regard to his welfare and to take steps if necessary for removing him from undesirable surroundings and for securing his education and training. These are still generalities. The law of contract deals more in brass tacks, but it is not difficult to detect a similar, if instinctive, inspiration in the rules which permit persons under twenty-one to escape from many obligations unless they are beneficial and in the statute which avoids some kinds of agreement which are regarded as generally of a disadvantageous nature.

The conception of the infant's welfare is not by any means lacking in the law of adoption. Supervisory duties are imposed upon county councils under the name of "welfare authorities." Moreover, by s. 5 (1) (*b*) of the Adoption Act,

1950, the court is expressly charged to satisfy itself, before making an adoption order, that the order will be for the welfare of the infant. The mere word here must mean the same as in *Re McGrath, supra*, but the subsection does introduce one speciality. Due consideration, it says, is to be given to the infant's wishes having regard to his age and understanding. It is clear that an infant of reasonable age ought to have a say in the question whether he is or is not to be adopted, for unlike a matter of custody, adoption does not end at majority. It is in law a lifelong change of parentage.

The natural parents are affected by an adoption order scarcely less than the subject of it. By it they surrender legal rights which neither the Guardianship of Infants Acts nor, subject to their own conduct, anything else has abrogated, or even subdued *vis-à-vis* a stranger. The law's regard for these rights is manifested in its insistence on their consent to the order unless dispensed with for reasons amounting to abandonment or unreasonable refusal. These questions of the parents' consent (or its dispensation on proper grounds) and the infant's welfare have tended to become confused in the arguments presented to the court in recent cases. They are in reality quite distinct. Each is an independent condition precedent to an adoption order; the one can never replace the other.

The salient feature in *Hitchcock* v. *W.B.* [1952] 2 Q.B. 561 was that the legal custody of the child whose adoption was desired had in previous proceedings been given to the mother against the father's wishes, and his complaint on that score had been rejected both by the magistrates and by the High Court. There the courts were acting with the infant's welfare uppermost in mind. Notwithstanding his reverses in these custody proceedings, the father still withheld his consent when the mother found willing adopters for it and they sought an order of the justices. The Divisional Court held that he could not be said to be objecting unreasonably. The justices found that the father had an honest desire to remain the child's parent and that he could contribute to its upkeep. Although he might have to put the child in some kind of institution (for the mother was not willing to keep it), whereas it would naturally be better for the child to have the benefit of a home life if possible, yet his refusal to consent to the proposed adoption was not unreasonable. Devlin, J., stressed that the reasonableness of the father's attitude was the test in the case, not the welfare of the child.

Hitchcock's case was approved by the Court of Appeal in *Re K.* [1953] 1 Q.B. 117. The county court judge had conceived himself bound to consider the reasonableness of the withholding by a mother of her consent to an adoption "having regard to the question whether the order if made would be for the benefit of the child." The Court of Appeal held this to be a wrong direction in law. As it was put by Jenkins, L.J., the refusal of consent cannot be unreasonable merely because the adoption would conduce to the child's welfare. "Otherwise a parent in poor circumstances, but guilty of no misconduct or dereliction of duty towards his child, could be compelled against his will to submit to an adoption order . . . in favour of any adopters who by reason of more affluent circumstances could make better provision for the child than he could ever hope to do."

Unreasonable withholding of consent by a parent is one ground for dispensing with it. The other arises if the parent has abandoned, neglected or persistently ill-treated the infant (1950 Act, s. 3 (1) (*a*)). Under this provision it was urged in *Watson* v. *Nikolaisen* (1955), *ante*, p. 370, the court could override a mother's refusal to consent where, having at first acquiesced in the child remaining with the proposed adopters, she had not visited the child for some two years nor contributed to its maintenance. The court did not accept, however, that this amounted to abandonment. "Abandoned" means the same in the Adoption Act as in the criminal law. "She was not," said Lord Goddard, "leaving the child to its fate; she was giving it over to people who desired to adopt it and in whom she had confidence." Accordingly she had not disentitled herself to change her mind before the application was heard and to object to the adoption.

The kernel of the welfare problem in adoption proceedings is exposed by the justices in *Watson* v. *Nikolaisen* when they say in the case stated that had they been solely concerned with the welfare of the child they would have made an order, but since they were of opinion that the mother had neither abandoned the child nor unreasonably withheld her consent, they dismissed the application. And the Divisional Court held them right so to approach the matter. The infant's welfare is indeed an essential consideration if an adoption order is to be made. But it is not in this type of proceeding the paramount consideration for the court in the sense that it furnishes any other ground than those laid down in the Act for dispensing with the parents' consent. J. F. J.

A Conveyancer's Diary

UNDISPOSED-OF PROPERTY AS A FUND FOR THE PAYMENT OF LEGACIES

In *Re Martin* [1955] 2 W.L.R. 1029, and p. 318, *ante*, the testator gave certain pecuniary legacies, and gave all the rest, residue and remainder of his personal estate upon trust to convert it into money and out of the money to arise thereby to pay his debts and funeral and testamentary expenses and to stand possessed of the proceeds of such conversion as in his will mentioned. The testator made no disposition of his real estate. (This was the combined effect of the testator's will and a codicil thereto, but the case would have been the same if these had simply been the provisions of a single testamentary instrument.) The testator left both real and personal estate, and thereupon two questions, substantially, arose for decision: (1) out of what fund or property were the testator's debts and funeral and testamentary expenses to be paid; and (2) out of what fund or property were the legacies to be paid?

In view of the testator's express provision relating to the payment of his debts and funeral and testamentary expenses, there would not seem to have been much to argue about on the first question. But when property is undisposed of by will, certain provisions of the Administration of Estates Act, 1925 (ss. 33 and 34, and Sched. I, Pt. II), have a *prima facie* application, and it is notoriously difficult to determine what, in the circumstances of any given case, those provisions mean. An argument on behalf of those who were interested in the trusts of the testator's residuary personalty under the will, and to whose benefit it would consequently have been to throw the liability for the debts and funeral and

testamentary expenses on to the undisposed-of realty, was thus, apparently, built up on the following lines.

Section 33 (1) of the Act provides that on the death of a person intestate as to any real or personal estate, such estate shall be held upon the trusts for sale and conversion therein contained. This subsection applies to all property in respect of which a person dies intestate, and therefore the undisposed-of realty in this case was subject thereto. Subsection (2) of s. 33 then provides that out of the net money to arise from the sale and conversion directed by subs. (1) the personal representative "shall pay all such funeral, testamentary and administration expenses, debts and other liabilities as are properly payable thereout having regard to the rules of administration contained [in Sched. I, Pt. II], and out of the residue of the said money the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will (if any) of the deceased." (This last part of this subsection is relevant to the other question which arose in this case only, but I set it out here for the sake of convenience.) Then subs. (2) provides that where the deceased leaves a will, s. 33 has effect subject to the provisions contained in the will. The provisions of Sched. I to the Act are brought in by s. 34, which in the case of a solvent estate provides, by subs. (3), that the deceased's real and personal estate shall, subject to certain matters, immaterial to the present case, and subject also to the provisions, if any, contained in his will, "be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Pt. II of the First Schedule to this Act." Finally, the said Pt. II, which is headed "Order of Application of Assets where the Estate is Solvent," contains a number of paragraphs of which the first is "1. Property of the deceased undisposed of by will, subject to the retention thereout of a fund sufficient to meet any pecuniary legacies," and the second, "2. Property of the deceased not specifically devised or bequeathed but included . . . in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid."

Part II of this Schedule provides, in effect, an order for resorting to various properties or funds, in a descending scale. In this case, as there was "property undisposed of by will" within para. 1 (the realty), this paragraph applied, and it was unnecessary to consider further para. 2. The argument on the first question based on all these provisions, including para. 1, was, apparently, that the combined effect of s. 34 (3) and this paragraph overrode the express provisions of the will, which expressly directed the payment of debts and funeral and testamentary expenses out of the residuary personalty. This argument was doubtless founded on the difference in language between the will, which spoke only in this connection of "debts and funeral and testamentary expenses," and the Act, which in both s. 33 and s. 34 (although the language of the two sections does not precisely correspond) speaks of funeral, testamentary and administration expenses, debts and other liabilities. But it had been held in *Re Atkinson* [1930] 1 Ch. 47, in circumstances similar to those in the present case so far as the first question which arose in this case is concerned, that a direction to pay debts, etc., out of residuary personalty displaced the application of para. 1 of Pt. II of the Schedule and exonerated undisposed-of realty therefrom. In the present case Danckwerts, J., applied that decision in determining this question.

The second question, viz., out of what property the legacies given by the testator were payable, was not directly covered by authority. The learned judge was referred to *Re Thompson* [1936] Ch. 676, but the question there was quite different. The testator gave certain legacies, and he gave the residue of his real and personal estate to *A* and *B* in certain shares. There was no direction as to how the legacies were to be paid. If they were paid out of the personalty, they would have borne no burden of estate duty; if they were paid out of realty, they would have borne a rateable part of the burden of estate duty payable in respect of the residue. That was the question there, and it was suggested that the old rule on this matter, that legacies are in the absence of direction to the contrary payable out of personalty until the personalty is exhausted, and that only when the personalty is exhausted is recourse to be had to the realty, had been altered by the provisions of para. 2 of Pt. II of Sched. I to the Administration of Estates Act. Clauson, J. (as he then was), rejected this suggestion and held that the old law still applied to the particular problem before him: the personalty was thus the pecuniary fund for the payment of the legacies.

Of that decision, Danckwerts, J., in the present case said that "there, Clauson, J., was dealing with para. 2 . . . That paragraph is not one which applies in the present case; it is para. 1 which applies." He then went on as follows: "I will mention in passing that I followed that case in *Re Beaumont's Will Trusts* [1950] Ch. 462, which was very different from the present case, because there was in that case a trust for sale, and there was not, as in the present case, an intestacy with regard to a particular asset of the testator's estate, but merely an intestacy with regard to a share of a fund given in the will, and therefore, as it seems to me, *Re Beaumont's Will Trusts* has no application to the case which I have to decide now." The learned judge then referred to the particular provisions of the Act which, in his view, governed the present case, viz., para. 1 of Pt. II of Sched. I and s. 33 (2), both of which direct that undisposed-of property is to be the fund for the payment of debts subject to the retention thereout of a fund to provide for any pecuniary legacies given by the deceased; this was a case of a single asset, the undisposed-of realty, out of which a fund had to be raised to provide for the pecuniary legacies, and if the fund was not to be raised for the payment of legacies, there was no point in setting aside the fund. The legacies were therefore directed to be borne by the undisposed-of realty.

I think that it will be generally agreed that this decision gives effect to the relevant provisions of the Act—that is, in particular, para. 1 of Pt. II of Sched. I. What troubles me here is the reference to *Re Beaumont's Will Trusts*. That decision was criticised at the time it was reported on the ground that it is irreconcilable with the previous decision of the Court of Appeal, or at any rate certain *dicta* of that court, in *Re Worthington* [1933] Ch. 771: see, e.g., Conveyancers' Year Book for 1950, p. 54. Now it seems to me to be difficult to reconcile that decision with the decision in the case under review. The judgment of Danckwerts, J., in *Re Beaumont's Will Trusts* was very short, and the gist of it was that s. 34 (3) of the Act made no provision with regard to legacies, and therefore there was a gap in the Act which the old law (*Re Thompson*) had to be called in to fill. But if there is property undisposed of by the will, s. 34 (3) does make provision for the payment of legacies: that is what has just been decided in *Re Martin*. It makes provision by referring to the order of application of assets set out in Pt. II of Sched. I to the Act, which provides in effect that where there is property undisposed of by the will, such property shall be the primary fund for the payment of legacies given by the will (subject, of course, to any provisions to the contrary

contained in the will itself). In *Re Beaumont's Will Trusts* the testatrix gave pecuniary legacies and gave the residue of her estate (that was how the will was construed) upon trust for sale and conversion and payment of funeral and testamentary expenses and debts and to hold the same in trust between certain named persons equally. One of those persons predeceased the testatrix, and the share of the residuary fund given to that person consequently lapsed and was undisposed of. It was held that *Re Thompson* applied, and that the legacies were payable out of the personalty generally and not out of the undisposed-of share of residue. In his judgment in the present case Danckwerts, J., referred to his earlier decision as having been made in a case "very different from the present case, because there was in that case a trust for sale, and there was not, as in the present case, an intestacy with regard to a particular asset." But para. 1 of Pt. II of Sched. I does not speak of particular assets: it speaks of "property," and a share in a residuary fund seems to me to be property, just as much as a person's real estate. With respect, this attempt to distinguish the earlier decision is not convincing, and *Re Martin* is another reason for treating *Re Beaumont's Will Trusts* with some suspicion.

"A B C"

Landlord and Tenant Notebook

STATUTORY LIABILITY FOR AGRICULTURAL DILAPIDATIONS

THE "Notebook" discussed one of the two points decided in *Evans* v. *Jones* [1955] 2 W.L.R. 936 (C.A.); *ante*, p. 305, on 23rd April last (*ante*, p. 284), by reference to a report which had appeared in an agricultural weekly paper; and I expressed some regret, now shown to be premature, at the decision having apparently escaped the notice of our law reporters. The report available at the time enabled me to deal with the one point only, that of the effect of the obligation "to repair" fixed equipment contained in the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations, imposed when there is no written agreement covering the items. What was in issue was whether the tenant, on whom reg. 5 imposes an obligation to repair certain items, was obliged to do more than maintain them in the condition in which they were when the tenancy began. The question was, I pointed out, one which in the case of covenants to repair and deliver up in tenantable repair had long been decided against the tenant; and I suggested that the court might have simply applied the judgment of Esher, M.R., in *Proudfoot* v. *Hart* (1890), 25 Q.B.D. 42 (C.A.). I see, however, that Evershed, M.R. (who considered the question "not, perhaps, so easy" as the other one), actually based his interpretation on a reading of the full wording of the regulation: "to repair and to keep *and leave* clean and in good tenantable repair, order and condition . . ." The learned Master of the Rolls added, however, that in determining whether the obligation had been complied with as regards any particular item, regard should be had to its age and character and its condition at the commencement of the tenancy: this, I suggest, can be considered an application to cases under the regulation of interpretations of covenants: *Stanley* v. *Towgood* (1836), 3 Bing. (N.C.) 4, and *Mantz* v. *Goring* (1838), 4 Bing. (N.C.) 451, originated the differentiation between old and new buildings; in *Payne* v. *Haine* (1847), 16 M. & W. 541, Parke, B., spoke of "a contract to keep the premises in repair *as old premises*," while insisting that that would not justify keeping them in bad repair because they happened to be in that state when taken. Differentiation by reference to character can also be supported by reference to Parke, B.'s judgment in this case; it includes the oft-cited contrast between houses in Spitalfields and mansions in Grosvenor Square, repeated by Esher, M.R., in *Proudfoot* v. *Hart*. But how to apply this to such items as hedges and ditches may well tax the imagination of an Agricultural Holdings Act arbitrator; it may be that higher standards are customarily observed in one part of the country than in another, but I am not going to court trouble by suggesting specific examples.

Besides claiming for breaches of the regulations, the plaintiff landlord in *Evans* v. *Jones* asked for statutory compensation for dilapidation of the holding under the Agricultural Holdings Act, 1948, s. 57. This section entitles a landlord to compensation on the tenant quitting on the termination of the tenancy "in respect of the dilapidation or deterioration of, or damage to, any part of the holding or anything in or on the holding caused by non-fulfilment by the tenant of his responsibilities to farm in accordance with the rules of good husbandry," the amount to be awarded being the cost of making good.

In the "Notebook" of 20th February, 1954 (98 SOL. J. 122), I suggested that these "responsibilities" were not very clearly defined, from the jurisprudence point of view, and that a case might be made for the view that the person to whom the tenant was responsible was the Minister of Agriculture and Fisheries. It would follow that in the absence of any covenant in the lease or tenancy agreement references to the responsibilities (which are defined in, and for the purposes of, the Agriculture Act, 1947, and not in the Agricultural Holdings Act, 1948), s. 57 would be inoperative. One of the arguments against this view would, however, be the provision in s. 57 (3) itself, entitling a landlord to claim under a written tenancy agreement *in lieu of* under the section; and in *Evans* v. *Jones* the question raised assumed that the landlord would have a valid statutory claim, the tenant's grievance being that the position was provided for, if at all, by s. 58 rather than by s. 57.

For s. 58 entitles a landlord to compensation if the "value of the holding generally" has been reduced, either by the dilapidation, deterioration or damage indicated in s. 57 (1) or otherwise by the tenant's non-fulfilment of his good husbandry responsibilities, in so far as the landlord is not compensated under s. 57: the amount to be equal to the decrease attributable thereto in the value of the holding (having regard to its character and situation and the average requirements of tenants reasonably skilled in husbandry). And, apart from the difference in norm—for in this case one does compare the condition of the farm at the end of the tenancy with its condition at the commencement—the claim cannot be made unless notice of intention is given at least one month before the tenancy expires, and no such notice had been given.

The tenant's case was not so much that the choice of weapons was his, but that some of the claims made were only

capable of being put forward under s. 58. The instances given in Evershed, M.R.'s judgment were the taking of consecutive hay crops without the application of fertilisers, and the amount of rough herbage with weeds and moss " in abundance " to be found in a particular pasture field. The learned lord justice could not accept the contention that such claims could not be made under s. 57: they were claims for failure to observe the rules of good husbandry, s. 57 entitled the landlord to the cost of bringing the fields into a proper state of health (the judgment says: " bringing . . . back; " but this rather assumes that some previous occupier had farmed badly). What s. 58 did, Evershed, M.R., said, was to give a landlord the right to compensation when as a result of specific failures, which failures were subject to claims under s. 57, there was general depreciation; but if the landlord also made a claim for the same breaches under s. 57, he must bring into account anything he recovered under that section when claiming under s. 58.

It was, in all likelihood, the difference in norm to which I have referred which discouraged the landlord from recourse to s. 58; if the tenant left the farm no worse than he had found it, it would indeed fall short of the " tenantable repair, order and condition " standard, but the landlord could not complain of reduction in value.

The decision is of great importance as it shows that, in spite of all that the Act does for tenant farmers in ensuring them rewards for their efforts as well as security of tenure, he who takes a farm which is in poor condition should consider his position carefully. The tenant in *Evans* v. *Jones* might have successfully stipulated that his liability was not, in the words of the county court judge, to be a liability to put the farm in a better condition than it was when he first took over; but it must not be thought that that would necessarily give him all the protection he required. For, by s. 6 (*2*), a landlord or a tenant may, should a tenancy agreement in writing effect substantial modifications in the operation of the regulations (the Maintenance, etc., of Fixed Equipment Regulations), request the other party to vary the agreement so as to bring it into conformity with their provisions and, failing agreement, refer to arbitration the terms of the tenancy with respect to the maintenance, repair and insurance of fixed equipment. Looking further ahead, however, the tenant could then possibly bank on the provision in s. 7 (*3*) which directs the arbitrator to vary the rent as well when, on a reference under s. 6 (*2*), it appears to him that by reason of any provision included in his award it is equitable that the rent should be varied.

R. B.

HERE AND THERE

DREAM BLAZE

" A DREAM Cottage Blazes," said a recent headline in my favourite newspaper, and, although so many of the narratives one discovers in its columns seem to soar into the regions of the higher fantasy, this one more than most belonged quite definitely to the inconsequent, inexplicable world of sleep. I longed to take it to some distinguished psychiatrist in Harley Street, pass it off as a nocturnal product of my own subconscious and see what, on the principles of Freud or Adler, he would have made of my mental condition. " I was in a dream cottage in Devon," I would say, for it is a journalistic, if not a psychiatric, convention that all " dream cottages " are in Devon or Cornwall. " It had a thatched roof and the spacious quality of dreams; it must have had ten rooms. I was standing at the window looking out at Dartmoor Forest when suddenly I heard a rumbling, like a distant thunderstorm, approaching and a low black cloud came drifting towards the cottage. The rumble grew and the cloud thickened and suddenly I saw a steamroller trundling steadily up the hill. Inside it there was a barrister and another man. Yes, I said a barrister. Then a shower of fiery particles dropped down from the cloud on to the garden and the thatch and at once the roof was blazing. The steamroller and the men had gone out of sight, but soon they came back and apologised." It seems rich in symbolic possibilities both of the Freudian and the Adlerian variety, but the more positivist approach would rather pursue the fascinating question: What on earth is a barrister doing taking a steamroller through the Devon lanes, taking her, as a matter of fact, on a run of 150 miles from Callington in Cornwall to Amesbury in Wiltshire, where his companion was a director of a building firm? After the catastrophe they abandoned their vehicle. In an eventful and difficult journey the blazing thatch had proved in every sense the last straw.

FOR THE ROLLING ROAD

THE only explanation of the trip offered in the newspaper report was that it was undertaken " to beat the strike." There is something Chestertonian about this last gesture of the last free locomotive trundling untrammelled through the lush West Country landscape, a sort of brother to the Flying Inn. Its passengers might be characters out of the same sort of tale—the barrister representing the free and lawful man of the Common Law, the Wessex builder to bid the hearths and homes of a new rural England rise on the ruins of self-strangled industrialism. They would " beat the strike," beat the trade unions, beat the nationalised and enslaved railways. The forty-five-year-old steamroller would represent the principle of free will, scorning the fixed tracks of the determinist iron way. Rolling irresistible along the rolling English road, its crusade would have set the country ablaze. Unfortunately it did so all too literally and in the flames of the dream cottage the great revolt of the libertarian locomotive went up in smoke. Its crew are reported to have abandoned it somewhere in the neighbourhood of Okehampton. So let it rest, the wild rose blowing above it as strangers pass it in the ditch.

FOR CIRCUITS IN THE CRISIS

HAVE I attributed too far-reaching a design to this adventure? Perhaps it belonged really rather to the elvish world of Emett. Perhaps it was a piece of good old sturdy English eccentricity like the young bull Jupiter that the Yorkshire character Jemmy Hirst broke in and rode in the hunting-field. Perhaps it was a stirring of that resilient improvisation which is the glory of Western civilisation, as when the French general rushed reinforcements for the Battle of the Marne in a fleet of Paris taxi-cabs. One hopes devoutly that the abandonment of the steamroller is only a temporary check in a new and glorious career for it. If the railway strike goes on (and at the moment of writing there seems to be no particular reason why it should soon end), the difficulties of conducting the circuit system, as at present organised, will steadily increase, especially as one must eventually reckon on a scarcity of petrol. One must therefore be prepared to draw upon every available resource. So if one barrister has discovered the possibilities of the steamroller, why not others? There must

be a respectable number resting in dignified retirement but sturdily roadworthy. As symbols of British justice they would bring a new realistic pageantry to the assizes, rolling through the streets, slow perhaps and a trifle antiquated but sure and irresistible. After all, it's quality, not speed, that counts in craftsmanship, and that goes for the craftsmanship of the law. It is something of that idea that the pageantry of the assizes has been maintained to get across and if Bench and Bar and solicitors and witnesses took even to elephants and scarlet and gold caravans to bring justice to the shires in the transport crisis, people would soon settle down to it quite unquestioningly. For assize towns on navigable rivers and inland waterways strings of barges, heraldic with castles and roses, or a Dunkirk fleet of small boats, might come to the rescue of British Themis in the provinces. Every change started with an idea and the barrister who first thought of travelling by steamroller may (despite the initial set-back) yet be revered as the James Watt of a whole new circuit practice.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

National Insurance and the Self-Employed

Sir,—My attention has been drawn to comments on the position of solicitors and other self-employed persons under the National Insurance scheme made in "Current Topics" in your issue of 4th June.

In return for their National Insurance contributions, self-employed persons and their wives can, with no more than ten years' contributions behind them, become qualified for retirement pensions of 40s. single, 65s. married, from age 65 (60 for women).

For the normal married couple these retirement pension rights alone represent capital liability at pension age of well over £2,000. This may be compared with £188, the maximum amount which can be required in contributions from self-employed persons qualifying for pension in 1958, i.e., ten years after the present scheme started. But there are other valuable insurance benefits for the self-employed before pension age. After three years' contributions, a self-employed person is entitled to sickness benefit at 40s. a week (65s. married) during incapacity for work however long the incapacity continues and no contributions are required to keep in full insurance during sickness. For the wife and children of a self-employed man there are also allowances during widowhood and for orphans, maternity grants, and death grants.

Self-employed persons can in fact qualify for all the National Insurance benefits open to employed persons except unemployment benefit and the various benefits of the separate Industrial Injuries scheme. The self-employed person's contributions are not, however, charged with any part of the cost of these other benefits and the self-employed man's contribution of 8s. 5d. is accordingly substantially lower than that of 12s. 9d. required for an employed man. The very favourable terms which National Insurance offers to all contributors but especially to those who started in 1948 in middle life, involve heavy additional payments from general taxation. The Exchequer's "supplement" to the contributions of the self-employed is, in fact, larger than that for other classes.

F. D. BICKERTON,
Chief Press Officer,
Ministry of Pensions and
National Insurance.

London, W.C.2.

REVIEWS

The Town and Country Planning Act, 1954. By JAMES KEKWICK, of Gray's Inn and the South-Eastern Circuit, Barrister-at-Law, and JACK HUGHES, B.Sc. (Est. Man.), F.R.I.C.S., F.A.I., Chartered Surveyor. Assisted by DAVID SULLIVAN, M.A., B.C.L., of the Inner Temple and the Midland Circuit, Barrister-at-Law. 1955. London: The Royal Institution of Chartered Surveyors. £1 5s. net.

The Town and Country Planning Act, 1954. With General Introduction and Annotations. By D. P. KERRIGAN, B.L. (Edin.), of the Middle Temple, Barrister-at-Law, and J. D. JAMES, B.C.L., M.A., of the Middle Temple, Barrister-at-Law. Reprinted from Butterworth's Annotated Legislation Service. 1955. London: Butterworth & Co. (Publishers), Ltd. £1 7s. 6d. net.

Applications for Planning Payments. By A. E. TELLING, M.A., of the Inner Temple, Barrister-at-Law, and F. H. B. LAYFIELD, A.M.T.P.I., of Gray's Inn and the Western Circuit, Barrister-at-Law. 1955. London: Butterworth & Co. (Publishers), Ltd. £1 18s. 6d. net.

We have already reviewed in these columns a number of books on the Town and Country Planning Act, 1954. To these must be added the three books now reviewed. With such a large selection of a high standard by authors of eminence in their particular fields the reader's choice of the one or two best suited to his own needs is not easy. Most of these books are, however, directed primarily to one particular profession or group in a profession, and thus the task of choosing is made easier, for the reader will naturally tend to choose those directed to his own profession or group.

Of the three books now reviewed Kekwick and Hughes, not unnaturally as it is published by the Royal Institution of Chartered Surveyors, looks first to valuers, and Kerrigan and James to those in the legal profession closely concerned with the Act who require detailed annotations, while Telling and Layfield has perhaps a more general appeal for it is written in narrative form suited for the benefit of those not familiar with the Act itself.

Kekwick and Hughes has a substantial introduction, an annotated text of the Act and four appendices which include the various regulations and a useful print of the sections of the 1947 Act amended by the 1954 Act showing the amendments made. It is replete with many valuation examples, including, in common with one or two other books on the 1954 Act, numerous geometrical figures for the purpose of explaining apportionments, which remind one of the geometry textbooks of one's school days. There is also an ample index.

Kerrigan and James is reprinted from Butterworth's Annotated Legislation Service and may be regarded as a companion volume to Hill's Complete Law of Town and Country Planning (4th ed.), with which it is cross-referenced. The annotations are the most detailed which the reviewer has yet seen in any book on the Act, and for the solicitor who requires a detailed knowledge of the Act this book can be described as essential. Hill has been the reviewer's constant companion in almost daily use since its publication and he has not found it wanting; Kerrigan and James undoubtedly also attains this high standard.

Telling and Layfield, with its narrative form and in its layout and print, is a far less forbidding approach to the subject, which will be welcomed by any solicitor who is not too well acquainted with the Act. Although its title refers only to planning payments, which might be construed as relating only to compensation for planning restrictions, the book treats also of the effect of the 1954 Act on the law relating to the assessment of compensation for the compulsory acquisition of land and other matters, and may confidently be recommended as a comprehensive book on the Act.

Byles on Bills of Exchange. Twenty-first edition. By MAURICE MEGRAH, of Gray's Inn, Barrister-at-Law, Secretary to the Institute of Bankers. 1955. London: Sweet & Maxwell, Ltd. £3 3s. net.

Citing the indisputable fact that Byles on Bills is a classic, the publishers assume permission to forgo the usual blurb on the dust jacket in favour of some anecdotes about the author. The "permission" may certainly be taken for granted, even though the choice of stories turns out to be no more enterprising

than the substance of the conventional blurb. The reviewer, whilst he bows with the best to the prestige of the work, has for his part not presumed to take its contents as read, but harbours the idea that prospective purchasers may like to have some impressions of the book in its present form.

Sir John Byles had not, as had Sir Mackenzie Chalmers, the hard-won advantage of being able to determine the arrangement of the codifying statute, so that the former's book, in all editions since the thirteenth, has borne the appearance of a somewhat disordered commentary on the bible of the subject. We do not rate this as a serious drawback. On the contrary the practitioner is scarcely inconvenienced at all, since he makes his *ad hoc* references by topic and not by section; while the student or general reader cannot but benefit from observing that the codified law is capable of more than one approach. And no one could describe Byles' plan as other than logical. The various types of bills, cheques and notes (including the heteronomous IOU) are described and distinguished at the outset, after which the potential history of a bill is gone through systematically. Later chapters deal with suretyship, limitation, conflict of laws and bankruptcy, among other matters.

The comparative scarcity of current decisions on the subject, possibly a tribute to the conservatism of the mercantile community as much as to the excellence of the Act of 1882, is remarkable. But this has not led to stagnation in the editing of Byles' work. Mr. Megrah refers in the preface to the removal of some archaisms. Into the instances of this process we will not enquire but will record our view that the treatment as it stands is notably concise and readable. A narrative style is adopted, the more important illustrations being fully set out in the text. American and Commonwealth decisions on analogous statutes are cited in the footnotes. The text itself, as would be expected considering the provenance of the book, progresses to its exposition of the statutory code from firm statements of common-law principles and those of the law merchant. Accordingly one finds the subject set in a satisfying perspective with glimpses of apposite detail such as only an understanding master would touch in. A valuable chapter on legal remedies, taking in damages and interest, re-exchange, third party procedure, summary judgment, pleadings and evidence, is certainly much more comprehensive than the corresponding section in most textbooks of substantive law.

Summing up, while we cannot say that not a comma is out of place (we disagree violently with one in the last line on p. 353), we are more than prepared to give this new edition the enthusiastic commendation discreetly omitted by the publishers from the wrapper.

BIRTHDAY LEGAL HONOURS

BARONS

The Rt. Hon. RALPH ASSHETON. Called by the Inner Temple, 1925.

Sir ARNOLD DUNCAN MCNAIR, C.B.E., Q.C., lately President and United Kingdom Judge, International Court of Justice at The Hague. Admitted 1906. Called by Gray's Inn, 1917, and took silk 1945.

PRIVY COUNCILLOR

ROBERT HUGH TURTON, Esq., M.C., M.P. Called by the Inner Temple, 1926.

BARONET

His Honour GEORGE CLARK WILLIAMS, Q.C. Admitted 1902. Called by the Inner Temple, 1909, and took silk 1934.

KNIGHTS BACHELOR

GEORGE HAROLD BANWELL, Esq., Secretary, Association of Municipal Corporations. Admitted 1922.

GEORGE HAROLD CURTIS, Esq., C.B., Chief Land Registrar. Called by Gray's Inn, 1925.

FRANCIS ALFRED ENEVER, Esq., C.B., M.C., Deputy Treasury Solicitor. Called by Gray's Inn, 1921.

ROBERT CHARLES KIRKWOOD ENSOR, Esq. Called by the Inner Temple, 1905.

Lt.-Col. OSWALD BISSILL GILES, D.L. Admitted 1911.

JOHN BOWES GRIFFIN, Esq., Q.C., Chief Justice, Uganda. Called by the Inner Temple, 1926, and took silk in the Bahamas, 1938.

ARCHIBALD FREDERICK HARRISON, Esq., C.B.E., Solicitor, Ministry of Labour and National Service. Called by the Inner Temple, 1919.

ROBERT HENRY MACONOCHIE, Esq., O.B.E., Q.C., Sheriff of Stirling, Dunbarton and Clackmannan. Called to the Scottish Bar, 1908, and took silk 1934.

JOSEPH LEON MATHIEU PEREZ, Esq., Q.C., Chief Justice, Trinidad and Tobago. Called by the Middle Temple, 1917.

GEORGE GILMOUR ROBINSON, Esq., Chief Justice, Zanzibar. Called by the Inner Temple, 1924.

JAMES MILLARD TUCKER, Esq., Q.C., Vice-Chairman, Royal Commission on Taxation of Profits and Income. Called by the Middle Temple, 1920, and took silk 1932.

SYDNEY VERNON, Esq. Admitted 1898.

ORDER OF THE BATH

K.C.B.

GEORGE PHILLIPS COLDSTREAM, Esq., C.B., Clerk of the Crown in Chancery and Permanent Secretary to the Lord Chancellor. Called by Lincoln's Inn, 1930.

C.B.

FRANCIS WILLIAM WALKER MCCOMBE, Esq., C.B.E., Chief Charity Commissioner. Called by the Middle Temple, 1921.

ORDER OF ST. MICHAEL AND ST. GEORGE

K.C.M.G.

Sir UKWATTE ACHARIGE JAYASUNDERA, K.B.E., Q.C. Advocate, 1937, called by Lincoln's Inn, 1949, and took silk (Ceylon) 1949.

The Honourable Sir ALAN EDWARD PERCIVAL ROSE, Q.C., Chief Justice of the Dominion of Ceylon. Called by the Inner Temple, 1923, and took silk (Ceylon) 1948.

ORDER OF THE BRITISH EMPIRE

K.B.E.

Sir WILLIAM IVOR JENNINGS, Q.C., Constitutional Adviser to the Government of Pakistan. Called by Gray's Inn, 1928, and took silk 1949.

WILLIAM O'BRIEN LINDSAY, Esq., lately Chief Justice of the Sudan. Called by Gray's Inn, 1943.

Brigadier HENRY SHAPCOTT, C.B., C.B.E., M.C., Army Legal Services Staff List. Admitted 1909.

C.B.E.

WILLIAM HENRY ARNOLD, Esq., H.M. Attorney-General, Guernsey. Called by Gray's Inn, 1926.

JOHN DOUGLAS GEAKE, Esq., Deputy Controller of Death Duties, Board of Inland Revenue. Called by the Middle Temple, 1917.

PERCY GRANVILLE HUTTON, Esq., Assistant Solicitor, Board of Inland Revenue. Admitted 1923.

DEREK LOMAX, Esq., lately Senior Justice of the High Court of the Sudan. Called by Gray's Inn, 1943.

HEDLEY JOHN PARHAM, Esq., Assistant Director, Department of the Director of Public Prosecutions. Called by the Inner Temple, 1919.

WILFRED STANLEY SCAMMELL, Esq., M.C. Admitted 1921.

JAMES THOMAS PITHER WILSON, Esq., Chief Registrar in Bankruptcy, High Court of Justice.

O.B.E.

FRANCIS JOHN BROAD, Esq., Town Clerk, Borough of Barnstaple, North Devon. Admitted 1937.

Major WILLIAM FOSTER, M.C., T.D., J.P. Admitted 1921.

HAROLD WILLIAM GLENISTER, Esq., Chairman, Eastbourne National Insurance Local Tribunal. Admitted 1908.

KENNETH EWART TANSLEY, Esq., Honorary Secretary, Wembley Savings Committee. Admitted 1926.

JOHN LOUIS BENEDICT TODHUNTER, Esq., Senior Legal Assistant, Ministry of Education. Called by the Inner Temple, 1930.

M.B.E.

JOHN ANTHONY MARKLAND, Esq., Chief Clerk, Westminster County Court.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

COURT OF APPEAL

DIVORCE: INSANITY: BREAK BETWEEN DETENTION UNDER TEMPORARY ORDER AND VOLUNTARY TREATMENT

Charlton *v.* Charlton

Evershed, M.R., Hodson and Parker, L.JJ.

18th May, 1955

Appeal from Judge Rewcastle, Q.C., sitting as a Special Commissioner at Leeds.

In 1953, a husband, J. A. Charlton, petitioned for divorce on the ground that his wife was incurably of unsound mind and had been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition. The wife had been admitted to an institution in February, 1947, and had been detained in pursuance of an order within s. 1 (2) (*a*) of the Matrimonial Causes Act, 1950, for six months. The order had then lapsed and she had been discharged and readmitted twelve days later as a voluntary patient. She had thereafter remained under continuous care and treatment. The commissioner dismissed the petition and the husband appealed.

EVERSHED, M.R., said that, although *Frank* v. *Frank* [1951] P. 430 showed that in construing s. 1 (2) (*d*) of the Act of 1950 it might be necessary to reject a rigid construction if it would have the effect of making the section ineffective, nevertheless it could not be said here within the fair interpretation of the section that the wife underwent treatment after the termination of the order "without any interval." As Lord Greene, M.R., said in *Safford* v. *Safford* [1944] P. 61; 60 T.L.R. 439; [1944] 1 All E.R. 704, it was doubtful whether the principle of *de minimis non curat lex* ought to be applied in construing this section.

HODSON and PARKER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Laurence Pratt* (*Ridsdale & Son*, for *Heninghem, Armstrong & Ambler*, York); *H. G. Bennett* (*Official Solicitor*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 675

LEGAL AID: SUM PAID INTO COURT ACCEPTED BY LEGALLY AIDED INFANT PLAINTIFF: CLAIM BY LAW SOCIETY AGAINST SUM PAID INTO COURT

Law Society *v.* Rushman

Singleton, Jenkins and Morris, L.JJ. 20th May, 1955

Appeal from Brighton County Court.

The Legal Aid and Advice Act, 1949, provides, by s. 3 (4): "Except so far as regulations otherwise provide, any sums remaining unpaid on account of a person's contribution to the legal aid fund in respect of any proceedings and, if the total contribution is less than the net liability of that fund on his account, a sum equal to the deficiency shall be a first charge for the benefit of the legal aid fund on any property (wherever situate) which is recovered or preserved for him in the proceedings." An infant plaintiff, suing by her father, brought an action against her employers for damages for personal injuries. She had been granted a civil aid certificate in her own name, her contribution being fixed at £4 10s. The defendants paid into court a sum of £125, which, at the commencement of the trial, with the approval of the judge, was accepted by the plaintiff. The attention of the judge was not directed to the provisions of the Legal Aid and Advice Act, 1949, in respect of the legal aid fund's costs, and he ordered that the money paid in, after the deduction of £20 in respect of the defendants' costs, should be transferred to the county court for the benefit of the infant plaintiff. Subsequently an application to the county court for the payment out to them of the money was made by The Law Society, who claimed that the legal aid fund had a first charge on the sum recovered in the action for the balance of the fund's costs not covered by the plaintiff's contribution. The county court judge ordered payment out to the plaintiff on her application. The Law Society appealed.

SINGLETON, L.J., said that the effect of s. 3 (4) was that, if the legal aid fund was out of pocket, any money recovered on behalf of a plaintiff was subject to a first charge for the benefit of the fund. In a case like the present, where the deficiency exceeded the damages recovered, The Law Society had a right to claim their first charge on the damages. The sum paid into court might have been taken out at an earlier stage; but at trial the plaintiff was advised to take it out. It was most important in the administration of the service given by the Act that the plaintiff should be advised what the position was before a settlement was arrived at; it was disappointing for a plaintiff to be advised to take money out of court, and not be told that someone else had a charge over the whole amount. The county court judge had been much troubled by the order of the trial judge, whose attention had not been drawn to s. 3 (4), and who might well have modified his order under the slip rule if a later application had been made. Among his reasons for giving judgment for the plaintiff, the county court judge had sought to distinguish *R.* v. *Judge Fraser Harrison* [1955] 1 Q.B. 287, but that case was on the same footing as the present. Regulation 19 of the Legal Aid (General) Regulations, 1950, vested in The Law Society any charge under s. 3 (4) on property recovered and the right to enforce such charge. Further, in the present circumstances, The Law Society was a "person interested" under Ord. 16, r. 13 (2), of the County Court Rules, 1936. The appeal must be allowed.

JENKINS and MORRIS, L.JJ., agreed. Appeal allowed.

APPEARANCES: *J. Macgregor* (*Hempsons*, for *Gates & Co.*, Brighton); *J. K. Wood* (*Charles Webb & Sons*, Brighton).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 681

MASTER AND SERVANT: UNSKILLED LABOURER LENT BY ONE EMPLOYER TO ANOTHER: INSURANCE POLICY: "PERSON UNDER CONTRACT OF SERVICE"

Denham *v.* Midland Employers' Mutual Assurance, Ltd.

Denning, Birkett and Romer, L.JJ. 26th May, 1955

Appeal from Lord Goddard, C.J.

Eastwoods Ltd., a firm of brickmakers, employed L. G. Ltd., a firm of boring and pump engineers, to do certain work on their land and provided *C*, one of their unskilled labourers, to help with the work. The labourer continued to be paid by Eastwoods, who alone had power to dismiss him and who kept his National Health Insurance card, but he worked alongside L. G.'s skilled employees and under the direction of their foreman. *C* was killed in circumstances which rendered L. G. Ltd. liable to his widow on the ground that his death was owing to their negligence or that of their servants. L. G. Ltd. had two insurance policies, an employers' liability policy with an insurance company and a public liability policy with Lloyd's. The employers' liability policy covered death or injury to "a person under a contract of service" with L. G. Ltd., and the public liability policy excluded from cover liability for the death of a person under a contract of service with L.G. Ltd. The question raised by the case was under which of the two policies L. G. Ltd. were covered in respect of the death of *C* while temporarily employed by them. In arbitration proceedings, the arbitrator found that the labourer was employed "under a contract of service" with L. G. Ltd., and, consequently, that they were covered by the employers' liability policy. On appeal by special case, Lord Goddard, C.J., reversed the arbitrator's decision and held that *C* was not under a contract of service with L. G. Ltd., who were therefore entitled to be indemnified under the public liability policy with Lloyd's. The underwriters appealed.

DENNING, L.J., said that, on reading the two policies, it was clear that the question was whether *C* was employed "under a contract of service" with L. G. Ltd. If he was, the insurance company was liable; if he was not, Lloyd's underwriters were. Much of the difficulty surrounding the question was due to the nineteenth-century conception that a servant of a general employer might be transferred to a temporary employer so as to become for the time being the servant of the latter. That conception was a useful device to put liability on the shoulders of the one who should properly bear it, but it did not affect the contract of service itself. No contract of service could be transferred from one employer to another without the real consent of the servant express or implied. He had no doubt that if, in the present case, a third person had been injured by *C's* negligence in the course of his work, L. G. Ltd., and not

Eastwoods, would be liable to the injured person. So when *C* was killed L. G. Ltd. were liable to his widow on the same footing as if they were his masters. Those results were achieved in law by holding that *C* became for the time being the temporary servant of L. G. Ltd. There was no harm in thus describing him so long as it was remembered that it was a device designed to cast liability on the temporary employer. Such a transfer rarely, if ever, took place when a skilled man was lent to exercise his skill for the temporary employer, but it sometimes took place in the case of an unskilled man who was lent to help with labouring work. The real basis of the liability was, however, simply this: that if a temporary employer had the right to control the manner in which a labourer did his work, so as to be able to tell him the right or the wrong way to do it, then he should be responsible when the workman did it in the wrong way as well as in the right way. They had to decide simply whether on the wording of the employers' liability policy *C* was employed under a contract of service with L. G. Ltd. He could see no trace of such a contract. His contract was with Eastwoods alone and the artificial transfer raised by the law to make L. G. Ltd. liable to others for *C's* faults and to *C* for their faults did not create a contract of service. That being so, L. G. Ltd. were not entitled to recover against the insurance company under the employers' liability policy, but only against Lloyd's under the public liability policy. That view was confirmed by the fact that the premium on the employers' liability policy was based on the amount of salaries and wages paid by the insured. It was, therefore, paid to cover the risk of injury to men on the pay roll of L. G. Ltd., and no one else. The appeal must be dismissed.

BIRKETT, L.J., agreed and read an assenting judgment of ROMER, L.J.

Appeal dismissed.

APPEARANCES: *Patrick O'Connor* and *Martin McLaren* (*Hewitt, Woollacott & Chown*); *Marven Everett*, Q.C., and *H. Tudor Evans* (*Machin & Co.*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] **[3 W.L.R. 84**

CHANCERY DIVISION

EASEMENT: RIGHT TO USE PRIVATE PARK ON CONTRIBUTING TO UPKEEP: WHETHER LEGAL EASEMENT: REQUISITIONING OF PARK: DIVISION OF COMPENSATION RENTAL AND DILAPIDATION PAYMENT

***In re* Ellenborough Park; *In re* Davies, deceased; Powell *v.* Maddison**

Danckwerts, J. 17th March, 1955

Adjourned summons.

In 1855, Ellenborough Park, being open and unbuilt-on land at Weston-super-Mare, and the surrounding property, belonged to *H.D.* and *J.W.* in equal moieties. They sold, for building purposes, the surrounding plots, conveying them by conveyances in similar form. By one, dated 23rd December, 1864, in consideration of a payment of £180 *H.D.* and *J.W.* conveyed to the purchaser the plot therein comprised in fee simple together with easements over the roads and drains on the estate of which the land comprising Ellenborough Park and the roads and houses surrounding it were formerly part "and also the full enjoyment . . . at all times hereafter in common with the other persons to whom such easements may be granted of the pleasure ground set out and made in front of the said plot of land intended to be hereby granted . . . but subject to the payment of a fair and just proportion of the costs charges and expenses of keeping in good order and condition the said pleasure ground." The purchaser covenanted to complete buildings in course of erection and also, jointly with all other persons to whom the right of enjoyment of the pleasure ground might be granted, to pay a fair proportion of the expenses of making the pleasure ground and at all times keeping it in good order and condition and well stocked with plants and shrubs. The vendors and each for himself, his executors, administrators and assigns, covenanted with the purchaser, his heirs, executors, administrators and assigns, at the expense of the purchaser, his heirs, executors, administrators or assigns and all others to whom the right of enjoyment of the pleasure ground might be granted to keep as an ornamental pleasure ground the plot of land; and they covenanted that they, their heirs and assigns, would not at any time thereafter erect or permit to be erected any dwelling-house or other building, except certain specified ornamental erections, within or on any part of the pleasure ground in the centre of Ellenborough Park. By 1879 most of the plots fronting on the park had been sold and houses built on them. In that year *W.D.* bought from *H.D.'s* and *J.W.'s* personal representatives the park and the portion still unsold of the estate of which it was formerly part, which was conveyed to him subject, as to the pleasure ground, to the rights still subsisting of all persons to whom the use and enjoyment of the pleasure ground had been granted. In 1880 *W.D.* died. From February, 1941, to May, 1946, the park was requisitioned by the War Office, which paid a compensation rental of £150 a year: and, when military occupation ceased, the trustees of *W.D.'s* estate received a further £1,770 4s. 7d. on account of dilapidations. By 1954, when this summons was issued, Ellenborough Park was the only part of *W.D.'s* estate still undistributed. By this summons the trustees asked whether the owners of property fronting on the park had any enforceable rights to the use of the park and, in effect, how the compensation rental and the £1,770 were to be dealt with.

DANCKWERTS, J., said that it was contended that the rights conferred on the purchasers were no longer enforceable because they did not conform to the essential qualities of an easement, but amounted to a *jus spatiendi* or right of perambulation which was not, it was said, known to English law. It was once thought that the class of legal easements was closed; but that was now accepted as wrong, and, as Professor Cheshire had written, if a right exhibited the characteristics of an easement, it was such even though it had not figured in practice before. There were cases in which *jus spatiendi* had been negatived, but they were cases in which the right was asserted by the public and not in favour of a dominant tenement, though Farwell, J., in *International Tea Co.'s Stores* v. *Hobbs* [1903] 2 Ch. 165, and *A.-G.* v. *Antrobus* [1905] 2 Ch. 188 denied that it existed at all in English law. But in *Duncan* v. *Louch* (1845), 6 Q.B. 904, a grant of 1675 gave the grantee and his successors, with certain neighbours, the "free liberty use and benefit" of a certain walk, "he, they and every of them, from time to time, contributing and paying a rateable share and proportion towards repairing the same," and the court treated that grant as a perfectly valid easement; and the decision in *Keith* v. *Twentieth Century Club, Ltd.* (1904), 73 L.J.Ch. 545, where the facts were similar to the present case, was inconsistent with the absence of a lawful easement. Unless constrained by authority, the court leaned towards carrying out the intentions of parties to a deed, and it appeared that *Duncan's* and *Keith's* cases (*supra*) were binding authorities that a right to use a pleasure garden was an easement in law. The surrounding property owners had therefore enforceable rights. On the next question, compensation rental under s. 2 (1) of the Compensation (Defence) Act, 1939, was a sum equal to the rent which might reasonably be expected from a tenant, and was payable to the person who, but for the requisitioning, would be entitled to possession. No doubt the trustees were the persons indicated, but that was not the end of the matter. In questions of compensation or compulsory purchase the rights of holders of easements were taken into account, and the present question must be regarded as similar. The frontagers were entitled to a share, to be assessed by an expert, and an inquiry must be directed. As to the sum paid in respect of damage, the covenant by the frontagers to pay a fair proportion of the expenses of upkeep implied that the owners were under an obligation to keep up the grounds and to apply the moneys received for that purpose. Accordingly, the trustees must expend the sum received in respect of damage in the upkeep of the grounds, and were not entitled to demand further contributions from the frontagers until that fund was exhausted. Order accordingly.

APPEARANCES: *T. A. C. Burgess* (*Waterhouse & Co.*, for *John Hodge & Co.*, Weston-super-Mare); *N. S. S. Warren* (*Robins, Hay & Waters*, for *Burges, Salmon & Co.*, Bristol); *M. Berkeley* (*Robbins, Olivey & Lake*, for *Griggs & Collett*, Weston-super-Mare).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[3 W.L.R. 91**

PRACTICE AND PROCEDURE: SUMMARY JUDGMENT: ORDER 14A: REVISED FORM

Woodlands *v.* Hinds

Vaisey, J. 24th May, 1955

Summons under Ord. 14A of the Rules of the Supreme Court.

Order 14A, which applies to claims in the Chancery Division for specific performance of agreements "for the sale or purchase of property" is headed in its revised form: "Summary judgment

in actions for specific performance" and the words "with or without alternative claims for damages" have been added. An agreement made between the plaintiff and the defendant was evidenced by the following letter dated 14th January, 1952, signed by the defendant: "In consideration of your taking up 1,580 . . . redeemable preference shares . . . in the . . . company, I undertake either myself to purchase or to find a purchaser . . . for such of the . . . shares in the company as you may hold on December 25, 1954, and which by that date have not been redeemed." The defendant failed to fulfil the agreement and the plaintiff took out a summons for summary judgment under Ord. 14A, asking for specific performance or for damages in lieu thereof.

VAISEY, J., said that Ord. 14A, as revised, must, in order to make sense, be held to cover a case in which there were alternative claims to the main claim for specific performance. That was the position here. The plaintiff had elected to treat the agreement in question as repudiated and was asserting a claim for damages, which was one of the claims set out in the indorsement to the writ. Another point taken was that property here meant real property, but "property" was a word of the widest possible import and included personal and real property and certainly included the shares in a limited company. The agreement in question consisted, so far as material, of an undertaking by the defendant either himself to purchase or to find a purchaser at par for certain preference shares. It was alleged that such a contract was not an agreement for the sale or purchase of property, and that the alternative claims in the new order did not include an agreement to find a purchaser as an alternative to an agreement to purchase. He (his lordship) thought that it was none the less an agreement for the sale or the purchase of property because the purchaser might be either the contracting party or somebody else. The purchaser who was found had to have certain qualifications, he must have the money, he must be of full age, and he must possess the necessary qualification to be accepted as a shareholder by the directors of the company in question. He was, on these grounds, prepared to hold that this contract came within the new Ord. 14A, and he would make the order asked for and the costs must be the plaintiff's in any event. Order accordingly.

APPEARANCES: *A. C. Sparrow* (*Whitelock & Storr*); *David Sullivan* (*Abbott, Baldwin & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 688

QUEEN'S BENCH DIVISION

LEGAL AID: COSTS: UNSUCCESSFUL AIDED PERSON UNINSURED DRIVER: SUPPORTED BY MOTOR INSURERS BUREAU

Godfrey and Another *v.* Smith and Another

Donovan, J. 19th May, 1955

Action.

Judgment was entered for the plaintiffs in an action in which they claimed damages for personal injuries incurred as a result of a collision between a motor-cycle, on which they were riding, and another motor-cycle ridden by the defendant. At the time of the accident the defendant was uninsured and he was therefore supported in the action by the Motor Insurers Bureau. It was submitted by the plaintiffs that this was a matter which the judge could take into account in considering whether or not to make an order for the full amount of costs against the first defendant, but the defendant contended to the contrary.

DONOVAN, J., said that in the ordinary way he would have made an order for the sum of £50 by way of costs to be paid by the unsuccessful defendant by instalments of £1 a month, if he so wished, because, apart from one circumstance, there was nothing which would justify a full order. But it appeared that, at the time of this accident, the defendant was uninsured, with the result that the proceedings were, to use a neutral term, supported by the Motor Insurers Bureau. It was wrong to say that the bureau indemnified the defendant against damages and costs. There was an agreement between the bureau, which was set up by the leading insurance companies and the Minister of Transport, under which the bureau undertook to pay such damages and costs as were awarded in an action against an unsuccessful defendant, and the judgment obtained by the plaintiff in such a case had to be assigned to the Motor Insurers Bureau, and they, thereafter, were in a posi on to execute it against the defendant. Whether they did or not was not known, but if the defendant's means increased they well might, and it was said that that was a circumstance which ought to be taken into account in determining what order as to costs ought to be made. In fact the unsuccessful defendant would not, in the first instance at least, pay. Whether that should be taken into account or not seemed to be largely a matter of discretion. Here was an individual plaintiff who was not legally aided, who had suffered a wrong, and who had been awarded damages in consequence. It would be wholly unjust if he had to be out of pocket of a considerable sum because the defendant was legally aided and could not, in the ordinary way, pay the full costs, which might amount to more than £50. Justice required that the circumstance of the Motor Insurers Bureau being behind the defendant in the sense indicated should be taken into account, as something relevant when it came to the question of making a full order or not. Therefore, defendant would be ordered to pay the two plaintiffs' costs, as taxed in the ordinary way. Order accordingly.

APPEARANCES: *J. D. Stocker* (*G. Howard & Co.*); *S. Chapman*, Q.C. (*Ponsford & Devenish*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 692

PROBATE, DIVORCE AND ADMIRALTY DIVISION

DIVORCE: CRUELTY: DECEPTION BY HUSBAND: SHOCK OF SUBSEQUENT DISCOVERY

Carpenter *v.* Carpenter, Holden intervening

Sachs, J. 6th May, 1955

Petition for divorce on the grounds of cruelty and adultery. The charge of cruelty was not defended; the intervener denied the charge of adultery. A husband, who had represented to his wife before marriage that he was an orphan and a bachelor, and had treated her well during the three years they lived together, disappeared, leaving no clue as to his whereabouts. In the course of inquiries which the husband must have known the wife would make, she learned that he had been twice previously married and twice divorced, had had children by both marriages, and a child by another woman; and had been associating since the marriage with yet another woman of whom he was accepted as the fiancé. These discoveries resulted in a marked injury to the wife's health.

SACHS, J., said that the facts showed the husband to be a congenitally amoral philanderer and an accomplished and plausible liar, a menace to the happiness of any young woman with whom he associated, and one who by his conduct had caused his wife to suffer grievously. Those facts did not of themselves establish that the husband had "treated the wife with cruelty" since the marriage. The mere incidence of severe results to the wife following upon acts of the husband did not of themselves necessarily constitute cruelty. It was therefore right to examine the components of what in the aggregate was charged as cruelty: the deception of the wife by the husband's fraudulent statements before the marriage; the subsequent association with the intervener; and the desertion in June, 1953. Pre-marriage fraud would often inevitably lead later to distress; and assuming that the revelations were accidental, or done in the way which the spouse hoped would be least hurtful to the wife, the realities of the case must be that the injury then flowed from the pre-marriage deception, and did not come within the section as treatment *since* the marriage. Association with another woman by itself might also not constitute cruelty (*Cox* v. *Cox* [1952] 2 T.L.R. 141), and desertion by itself was not cruelty, although it might be an ingredient. But the husband's failure to see that the discovery of his deception was not aggravated by his conduct, and the manner of his disappearance which had led to inevitable discovery, amounted in the circumstances to deliberate acts on his part which in the aggregate amounted to cruelty. His lordship held, however, upon the evidence, that the charge of adultery should be dismissed. Decree *nisi*.

APPEARANCES: *Anthony Harmsworth* (*Gordon, Dadds & Co.*); *Richard Ellis* (*Pettiver & Pearkes*); the husband did not appear and was not represented.

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [1 W.L.R. 669

Mr. PHILIP HENRY HARROLD, town clerk of Hampstead, was inducted as the jubilee president of the National and Local Government Officers Association when the Association's conference at Brighton ended on 10th June.

SURVEY OF THE WEEK

HOUSE OF COMMONS

PROGRESS OF BILLS

Read First Time :—

Agriculture (Improvement of Roads) Bill [H.C.] [10th June.

To make provision, by means of Exchequer grants and otherwise, for the improvement of certain roads situated in, or affording access to, livestock rearing areas; and for purposes connected with the matter aforesaid.

Aliens' Employment Bill [H.C.] [10th June.

To provide for the employment of aliens in civil service under the Crown.

Food and Drugs (Scotland) Bill [H.C.] [10th June.

To amend and consolidate certain enactments in Scotland relating to food and drugs; and for purposes connected therewith.

German Conventions Bill [H.C.] [10th June.

To provide for matters relating to certain tribunals agreed to be set up by conventions with the Federal Republic of Germany and to the enforcement of the customs laws of the Federal Republic in pursuance of those conventions by authorities of Her Majesty's forces.

Rating and Valuation (Miscellaneous Provisions) Bill [H.C.] [10th June.

To amend the law as respects rating and valuation for rating; and for purposes connected therewith.

STATUTORY INSTRUMENTS

Birmingham Water Order, 1955. (S.I. 1955 No. 806.)

Boroughbridge–Thirsk Trunk Road (Dishforth By-Pass) Order, 1955. (S.I. 1955 No. 796.)

Commercial Samples (Temporary Importation) Regulations, 1955. (S.I. 1955 No. 814.) 5d.

Draft **Double Taxation Relief** (Taxes on Income) (Isle of Man) Order, 1955. 6d.

East Sussex Review (Amendment) Order, 1955. (S.I. 1955 No. 797.) 5d.

Fur Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 788.) 6d.

Import Duties (Exemptions) (No. 4) Order, 1955. (S.I. 1955 No. 802.)

Iron and Steel Scrap (Amendment No. 2) Order, 1955. (S.I. 1955 No. 799.) 11d.

National Insurance (Contributions) Amendment Provisional Regulations, 1955. (S.I. 1955 No. 781.) 6d.

Retention of Cables and Main under Highway (West Suffolk) (No. 2) Order, 1955. (S.I. 1955 No. 803.)

Retention of Cables, Main and Pipes under Highways (Gloucestershire) (No. 1) Order, 1955. (S.I. 1955 No. 785.)

Retention of Cables, Mains and Pipes under and over Highways (Lincolnshire–Parts of Kesteven) (No. 1) Order, 1955. (S.I. 1955 No. 795.)

Retention of Cables under Highways (Plymouth) (No. 1) Order, 1955. (S.I. 1955 No. 794.)

Stopping up of Highways (Cheshire) (No. 1) Order, 1955. (S.I. 1955 No. 786.)

Stopping up of Highways (Kent) (No. 9) Order, 1955. (S.I. 1955 No. 790.)

Stopping up of Highways (London) (No. 18) Order, 1955. (S.I. 1955 No. 800.)

Stopping up of Highways (London) (No. 21) Order, 1955. (S.I. 1955 No. 787.)

Stopping up of Highways (Worcestershire) (No. 3) Order, 1955. (S.I. 1955 No. 793.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

POINTS IN PRACTICE

Will—NATIONAL SAVINGS CERTIFICATES—WHETHER TRUSTEE SECURITIES—APPRECIATION BETWEEN DATE OF DEATH AND REALISATION—WHETHER INCOME PAYABLE TO LIFE TENANT

Q. We are acting for the trustees under a will and in the estate was a substantial amount of National Savings certificates. They were realised as soon as practicable after the death and some £34 had accrued to their value between the date of death and the date of realisation. A tenant for life is interested in half the residue and his solicitors claim that the appreciation between the date of death and the date of realisation has to be treated as income, and furthermore contend that National Savings certificates, both principal and interest, being a charge on the consolidated fund, are trustee securities. The testator's will contained the usual power for the executors to postpone the sale and conversion of the estate and also a direction that no income from the estate, however invested and whether the same shall be received in respect of a period wholly or only partly prior to the testator's death, but actually received after death, shall be apportioned and treated as capital. As representing the trustees we contend that National Savings certificates are not made trustee securities by being a charge on the consolidated fund and that as no interest is paid nor increase received until the sale of the capital they do not constitute a good trustee security. We have quoted the case of *Re Holder's Will Trusts* [1953] 2 All E.R. 1, which in our view confirms that the increase earned is capitalised monthly, although in that particular case by reason of the wording of the will the increase after the date of death was treated as income as being " something in the nature of income." The solicitors for the tenant for life contend that this case established the principle that all appreciation on National Savings certificates from the date of death is to be treated as income. The point is one which must occur with great frequency but apart from the case we have quoted we can find no other authority.

A. (1) We think that National Savings certificates can most probably be properly described as a Government security of the United Kingdom and as such within the ambit of the Trustee Act, 1925, s. 1 (1) (*a*). But s. 3, *ibid.*, prescribes that the powers to invest conferred by the earlier provisions of the Act are to be exercised according to the discretion of the trustee, and we think that where there is a life tenant and a remainderman it would be a wrong exercise of that discretion to invest in securities of this type. (2) Curiously enough, *Re Holder's Will Trusts* [1953] 2 All E.R. 1 seems to be the only reported authority on the point and we are inclined to agree that its usefulness is probably confined to cases turning on identical facts. We cannot see, on any general equitable grounds, why the interest earned from the date of death to the date of encashment should enure for the remainderman; if in fact it does, we feel no doubt that the trustees would be under a positive duty to see that the certificates were encashed at the earliest possible opportunity. We observe that in *Re Holder's Will Trusts* the point was conceded by the remaindermen and this was inferentially approved by the learned judge (at p. 2). This seems to be the only judicial assistance available and we think the trustees should act on it. If the remaindermen wish to contest it they must do so at their own risk as to costs.

Income Tax—TRUST INCOME PARTLY DERIVED FROM COMPANIES RECEIVING DOUBLE TAXATION RELIEF—DUTY OF TRUSTEES

Q. We are acting for trustees of a settlement under which until recently an annuity was payable to *A*, and subject thereto

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the " Points in Practice " Department, The Solicitors' Journal, 21 Red Lion Street, London, W.C.1.

They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

the residue of the income was payable to *B* for life. *A* died in 1953 and as a result of certain assignments effected by *B* an annuity is now payable to a company, *C*, and the residue of the income to *D*. Part of the income of the trust is derived from companies who receive benefit of double taxation relief, and who, whilst only themselves suffering tax at 6s. in the £, nevertheless deduct tax at 9s. in the £ from dividends. When the trustees have divided the income amongst those entitled, income tax has of course been deducted by the trustees at the standard rate. The Inland Revenue have now raised additional assessments on the trustees in respect of the income received from the companies above referred to. In effect the trustees are called on to find the difference in tax between the standard rate and the net rate paid by the companies. The authority given is s. 350 of the Income Tax Act, 1952. The trustees have distributed all the income, having deducted tax at the standard rate, and of course suffered deduction of tax at the standard rate on all dividends received. Are the trustees bound to pay the assessments or can they be resisted ? If payable, out of what sums can the assessment be paid ? Can deductions be made out of income which has already suffered tax at the standard rate ?

A. The idea behind the Income Tax Act, 1952, s. 350 (2), is that dividends which have suffered United Kingdom tax at a rate less than standard rate can be used to cover the payment of annual charges only to the extent to which they have in fact suffered United Kingdom tax, notwithstanding that they have suffered other taxes so that the total deductions therefrom amount to standard rate. That is to say : to the extent to which annual charges are not covered by income which has borne United Kingdom tax at standard rate they are in the same position as annual charges which are not paid out of profits and gains brought into charge to tax—e.g., an annuity which, because the income fund is insufficient, is partly payable out of capital. Now, as is fairly well-known, the result of the Income Tax Act, 1952, s. 170, is that where an annuity, or part of an annuity, is paid out of capital the trustees must take out of capital not only the amount necessary to pay the annuitant but also income tax thereon, which latter must be accounted for to the Crown. The trustees here are in like case. Here an annuity, or part of an annuity, has to be paid out of income which has not borne United Kingdom tax at standard rate. Accordingly they must take out of that income not only the amount necessary to pay the annuitant but also income tax thereon to the extent of the difference between standard rate and the net United Kingdom rate shown on the dividend warrant. This latter must be accounted for to the Crown. If it were so accounted for it would not be available for payment to the residuary income beneficiary, *D*. In fact the trustees have not so accounted for it and have paid it over to *D*. In short they have overpaid *D* (although no doubt *D* may be difficult to convince on the matter). Had the trust been closed the trustees might have had great difficulty in recouping themselves, but it seems that *Re Musgrave* [1916] 2 Ch. 417 is sufficient authority for the proposition that where a beneficiary has been innocently overpaid the trustees may recoup themseves out of future income payable to him. Accordingly we would say : (i) the trustees cannot resist the assessments ; (ii) they must recoup themselves out of future income payable to *D* ; (iii) for the future they must remember this liability when considering how much residuary income is available for *D*.

NOTES AND NEWS

Personal Note

Mr. Charles Froud Hiscock, solicitor, of Southampton, and Mrs. Hiscock celebrated their golden wedding on 6th June.

Miscellaneous

DOUBLE TAXATION : ISLE OF MAN

The terms of a double taxation agreement between the Isle of Man and the United Kingdom are contained in the Schedule to a draft Order in Council published on 9th June. In the United Kingdom the arrangement requires the approval of Parliament.

DOUBLE TAXATION : PAKISTAN

An agreement between Pakistan and the United Kingdom providing relief for the double taxation of income was signed at Karachi on 10th June. The agreement, which is dated to take effect from 1st April, 1955, follows the general lines of similar agreements concluded by the United Kingdom, since the war, with other commonwealth and foreign countries. It will be published shortly by H.M. Stationery Office but will require the approval of the House of Commons before it can take effect in the United Kingdom.

DEVELOPMENT PLAN

SUNDERLAND COUNTY BOROUGH COUNCIL DEVELOPMENT PLAN

On 19th May, 1955, the Minister of Housing and Local Government amended the above development plan. A certified copy of the plan as amended by the Minister has been deposited at the office of the Borough Engineer and Surveyor, Athenæum Buildings, 27 Fawcett Street, Sunderland. The copy of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 10 a.m. and 12 noon, and 2 p.m. and 4 p.m. on weekdays, and 10 a.m. and 12 noon on Saturdays. The amendment became operative as from 3rd June, 1955, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 3rd June, 1955, make application to the High Court.

A correspondent has pointed out that in our Current Topic " Lawyers in Parliament " (p. 375, *ante*) the name of Mr. Gilbert Longden was omitted from the list of solicitors elected to the House of Commons. There are, therefore, twenty-one solicitor-M.P.'s in the present Parliament, and not twenty as erroneously stated.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

The following notices of the preparation of maps and statements under the above Act, or of modifications to maps and statements already prepared, have appeared since the tables given in vols. 97 and 98 and at pp. 64, 154 and 243, *ante* :—

DRAFT MAPS AND STATEMENTS

Surveying Authority	Districts covered	Date of notice	Last date for receipt of representations or objections
Anglesey County Council	Area of the Council : modifications to draft map and statement of 11th March, 1954	14th April, 1955	30th May, 1955
Cheshire County Council	Bebington Municipal Borough and Ellesmere Port, Hoylake, Neston and Wirral Urban Districts	13th April, 1955	19th August, 1955
Cornwall County Council	Stratton Rural District	26th May, 1955	30th September, 1955
Devon County Council	Dartmouth Borough, Salcombe and Kingsbridge Urban Districts and Kingsbridge Rural District	22nd April, 1955	26th August, 1955
Dorset County Council	Bridport and Lyme Regis Boroughs and Beaminster and Bridport Rural Districts : modifications to draft map and statement of 8th May, 1953	13th May, 1955	17th June, 1955
Essex County Council	The Administrative County of Essex except the Borough of Leyton and portions of the Boroughs of Barking, Chelmsford, Chingford, Dagenham, Ilford and Wanstead and Woodford : modifications to draft map and statement of 26th May, 1953	10th May, 1955	29th June, 1955
Kent County Council	Administrative County of Kent, except Penge and Sheerness Urban Districts and developed parts of certain boroughs and other urban districts : modifications to draft map and statement of 8th January, 1953	15th April, 1955	27th May, 1955

Surveying Authority	Districts covered	Date of notice	Last date for receipt of representations or objections
Gloucestershire County Council	North Cotswold and Tetbury Rural Districts; Newent Rural District; Northleach Rural District; modifications to draft maps and statements of 3rd December, 1952, 3rd and 15th December, 1952, and 13th April, 1953, respectively	Not dated	26th June, 1955
Northamptonshire County Council	Irthlingborough Urban District: modifications to draft map and statement of 29th July, 1953	11th May, 1955	13th June, 1955
	Wellingborough Urban District: modifications to draft map and statement of 29th July, 1953	11th May, 1955	13th June, 1955
	Wellingborough Rural District: modifications to draft map and statement of 29th July, 1953	16th May, 1955	20th June, 1955
Somerset County Council	Chard Borough, Crewkerne and Ilminster Urban Districts and Chard Rural District	4th May, 1955	10th November, 1955
Surrey County Council	Administrative County of Surrey: further modifications to draft map and statement of 29th April, 1952	14th April, 1955	20th May, 1955
	Further modifications	20th May, 1955	17th June, 1955
Worcestershire County Council	Halesowen Borough and Evesham Rural District: modifications to draft map and statement of 16th June, 1953	15th April, 1955	30th May, 1955

PROVISIONAL MAPS AND STATEMENTS

Surveying Authority	Districts covered	Date of notice	Last date for applications to Quarter Sessions
Isle of Wight County Council	Isle of Wight County	1st June, 1955	30th June, 1955
Leicester County Council	Leicester County	24th May, 1955	24th June, 1955
Southampton County Council	Andover Borough and Rural District	27th May, 1955	30th June, 1955
	Winchester City, Eastleigh Borough and Winchester Rural District	29th April, 1955	31st May, 1955

In addition, Northampton Administrative County Council announce that they have prepared a *definitive* map and statement covering Towcester Rural District. Sunderland County Borough Council announce that they have prepared a *definitive* map and statement covering the County Borough of Sunderland in respect of which applications to the High Court under Pt. III of Sched. I to the 1949 Act must be made by 11th July, 1955.

At the March, 1955, examination for Honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the examination committee recommended the following as being entitled to Honorary Distinction: FIRST CLASS: (1) Mr. C. J. H. Park, B.A., LL.B. Cantab.; (2) Mr. T. J. Arkwright, LL.B. Liverpool; SECOND CLASS: Messrs. R. Bonnett, B.A. Cantab., G. H. J. Bovell, B.A. Oxon., A. Collins, E. J. Curran, K. T. Davidson, A. G. Deeming, LL.B. Birmingham, H. Disley, LL.B. Manchester, J. R. Duffy, M. V. Edwards, LL.B. Durham, J. B. Evans, LL.B., B.Sc. London, B. B. Firth, LL.B. Leeds, D. Fletcher, LL.B. Manchester, P. G. I. Green, B.A., LL.B. Cantab., S. M. Hirsch, E. Houghton, LL.B. Liverpool, R. G. Hunter, R. W. Hunter, LL.B. London, P. Jacobs, D. A. Jones, M. G. Max, D. M. DaCosta, W. F. Poll, M.A. Cantab., T. Walton; THIRD CLASS: Messrs. J. B. Barty, R. K. Browne, LL.M. London, P. J. R. Clifton, D. B. Evans, R. R. Goodall, D. E. Landen, M. A. McGilvray, LL.B. Durham, A. O'Connor, LL.B. Bristol, M. R. Palmer, LL.B. London, J. K. P. Porter, LL.B. Bristol, I. M. Tilt, LL.B. London, D. J. D. Vaughan, P. J. Ward, M. P. Whitlock, M.A., LL.B. Cantab.

The Council of The Law Society have accordingly given Class Certificates and awarded the following prizes: To Mr. Park, the Clement's Inn Prize (value £40); to Mr. Arkwright, the Daniel Reardon Prize (value £20). The Council have given Class Certificates to the candidates in the Second and Third Classes. Eighty-four gave notice for examination.

Wills and Bequests

Mr. J. L. Brooks, solicitor, of Odiham and Basingstoke, left £65,307 (£63,852 net).

Mr. Jasper Lyon, retired solicitor, of Cambridge, former Coroner for Cambridgeshire, left £714 (£686 net).

OBITUARY

MR. F. W. GILLESPIE

Mr. Frederick William Gillespie, solicitor, of Leeds, died recently, aged 74. Admitted in 1906, he was Joint Registrar of Leeds County Court and Registrar of Leeds Bankruptcy Court from 1911 to 1923. He was appointed president of the Leeds Incorporated Law Society in 1936 and a West Riding magistrate in 1932. In 1940 he was elected vice-chairman of the Leeds (West Riding) Magistrates' Court.

MR. A. G. N. HANCOCK

Mr. Albert George Norton Hancock, solicitor, of the Strand, W.C.2, and Sanderstead, Surrey, died on 9th June. He was admitted in 1926.

MR. G. HICKS

Mr. Gilbert Hicks, C.B.E., J.P., Registrar of the Shoreditch County Court since 1934 and previously of the Northampton County Court from 1926 to 1934, died on 1st June, aged 67. He was a vice-president of the Committee of the Association of County Court Registrars from 1939 to 1944 and president from 1944 to 1948. From 1934 he was the Official Registrar-Member of the County Court Rule Committee. He also served on Mr. Justice Jones' Committee on County Court Practice and Procedure from 1946 to 1949. He had been a Justice of the Peace for Surrey since 1942, and was awarded the C.B.E. (Civil Division) in 1945.

MR. M. C. NIXON

Mr. Matthias Cyril Nixon, ex-managing clerk of Messrs. Wilkinson, Woodward and Ludlam, solicitors, of Halifax, died recently, aged 64. He started working for the firm at the age of 14 and had completed 50 years' service with the firm last year when he retired.

MR. G. A. J. SMALLMAN

Mr. George Augustus John Smallman, solicitor, of Maidenhead, died recently, aged 85. He was admitted in 1914.

SOCIETIES

The Annual Conference of the RATING AND VALUATION ASSOCIATION is to be held at the Royal Festival Hall, London, on 20th and 21st October. Lady Simon of Wythenshawe is to preside at the conference, and in addition to the customary conference luncheon to be held on the 20th, there will be a reception for delegates and their ladies in the Ceremonial Suite of County Hall on the evening of 21st October, given by the Right Hon. the Chairman of the London County Council, Mr. Norman G. M. Prichard.

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